IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5073 OF 2005

Avindabai Ramanna Vhanamane & ors. ...Applicants
vs.
The State of Maharashtra ...Respondent

Mr.V.V.Purwant for the Applicants
Ms M.M.Deshmukh,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : SEPTEMBER 27,2005

P.C.:

1. Heard Advocate for the Applicant and the learned A.P.P. for State. The challenge in this Application under section 482 of the Code of Criminal Procedure, 1973 is to the order dated 18th June 2005 passed by the Sessions Court. By the said order, the learned Additional Sessions Judge directed the Investigating Officer to record statements of concerned witnesses and submit a report along with the statements of witnesses. The prosecution was permitted to lead further evidence.

2. The learned Advocate for the Applicant submitted that after recording of the evidence and after conclusion of the final arguments, application dated 8th June 2005 was made by the prosecution seeking directions for further investigation. He submitted that after the Applicant has disclosed his defence in the trial, further investigation and further evidence which may lead by the prosecution may cause prejudice to the Applicant. The learned A.P.P. supported the impugned Judgment and Order. The learned A.P.P. pointed out that further investigation is required for recording the statements

of witnesses for limited purpose of showing that the Applicant visited the bank on the relevant date.

3. The Applicants are sought to be prosecuted for the offence punishable under Sections 498-A, 306, 323 and 34 of the Indian Penal Code. The Prosecution Witness No.4 Parshuram Kamble was examined. The said witness stated that on 19th August 2004 he had been to Canara Bank, Saraswati Chowk Branch,Solpaur for depositing money in his own account. At that time he was making conversation with P.W.no.1. According to his version at that time one person approached them who was introduced by the P.W.No.1 as the father-in-law of his daughter. Then P.W.No.4 along with P.W.No.1 and the person who was stated to be father-in-law of the daughter of P.W.No.1 went to the Canteen for a cup of tea in the canteen. It is stated by the said witness that the said person who is alleged to be accused No.2 asked the P.W.No.1 to pay Rs.1,50,000/- for securing employment to the accused No.3.

4. In the cross examination, a suggestion was given to the said witness that he has falsely deposed that he had gone to deposit the amount in the bank on the relevant date. The ground made out in the application by the prosecution is that for establishing that the the said witness visited the bank it was necessary to record statements some of the concerned bank officials and to collect documents.

5. It is true that the application is made by the prosecution at the fag end of the trial. The Apex Court in a decision reported in (2004) 5 S.C.C. page 347 (Hasanbhai Valibhai Qureshi vs. State of Gujarat and others) in paragraph No.11 observed thus :

"11. Coming to the question whether a further investigation is warranted, **the hands of the investigating agency or the court should not be tied down on the ground that further investigation may delay the trial, as the ultimate objet is to arrive at the truth."**

(Emphasis supplied)

The Apex court quoted with approval its earlier decision in case of Ram Lal Narang vs. State (Delhi Administration) reported in 1979 2 S.C.C. page 322 and in paragraph 13 thereof observed thus :

"13. In Ram Lal Narang V. State (Delhi Administration) it was observed by this court that further investigation is not altogether ruled out merely because cognisance has been taken by the court. **When defective investigation comes to light during course of trial, it may be cured by further investigation, if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light**

instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the courts. In view of the aforesaid position in law, if there is necessity for further investigation, the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case." (Emphasis supplied)

6. In view of the said decision no fault can be found with the direction to carry out further investigation for a limited purpose. The other grievance is regarding permission granted to examine additional witnesses. The Apex Court in a Judgment reported in 1991 Suppl.1 S.C.C. page 271 (Mohanlal Shamji Soni vs. Union of India and another) held thus:

"27. The principle of law that emerges from the view expressed by this court in the above decisions is that the criminal court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides

is closed and the jurisdiction of the court must obviously be dictated by exigency of the situation, and fair play and good sense appear to be the only safe guides and that only the requirements of justice command the examination of any person which would depend on the facts and circumstances of each case."

7. In the present case the Court has directed that a limited further investigation should be carried out and the prosecution is permitted to examine witnesses. In view of the law laid down by the Apex Court, no fault can be found with the said direction.

8. However, to ensure that no prejudice is caused to the Applicant, it will be necessary to permit the Applicant to recall the witnesses which are already examined by the prosecution for further cross examination. It will be open for the Applicant to lead defence evidence, if any.

9. Hence, I pass the following order :

i) Application is rejected. However, after submission of the report and recording of further evidence, if any, which may be led by the prosecution on the basis of impugned order, the Applicants will be entitled to recall the prosecution witnesses who are already examined for further cross examination and the Applicants will be permitted to lead

defence evidence, if any.

ii) All questions on merits are kept open.

iii) Parties to act upon an authenticated copy of this order.

JUDGE